

COURT OF APPEALS OF THE FIFTH DISTRICT OF TEXAS AT DALLAS

MacKenzie Rene Chesney v. State

Nos. 05-18-01464-CR & 05-18-01482-CR (Tex. App.—Dallas Apr. 27, 2020) (mem.) · No. Nos. 05-18-01464-CR and 05-18-01482-CR · Decided April 27, 2020

SUMMARY

The Fifth District Court of Appeals at Dallas affirmed the judgments in two criminal cases involving convictions for intoxication manslaughter and intoxication assault. The court held that the appellant waived her complaint about improper jury argument by failing to pursue her sustained objection to an adverse ruling through a request for an instruction to disregard or a motion for mistrial.

CASE DETAILS

COURT	Court of Appeals of the Fifth District of Texas at Dallas
WRITING FOR THE COURT	Amanda L. Reichek; Justice Myers; Justice Partida-Kipness; Justice Reichek
JURISDICTION	Texas
DECIDED	April 27, 2020
DOCKET	Nos. 05-18-01464-CR and 05-18-01482-CR
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from judgments entered after appellant pleaded guilty to intoxication manslaughter and intoxication assault, both involving a deadly weapon. Appellant challenged the prosecutor's punishment-stage jury argument.
STANDARD OF REVIEW	Preservation-of-error review; an appellate complaint about erroneous jury argument is waived when the defendant does not pursue the objection to an adverse ruling by requesting an instruction to disregard or moving for a mistrial.
PRECEDENTIAL VALUE	Unpublished, nonprecedential memorandum opinion; designated do not publish under Texas Rule of Appellate Procedure 47.2(b).
PARTIES	MacKenzie Rene Chesney v. The State of Texas

TOPICS

[criminal procedure](#)[preservation of error](#)[appellate procedure](#)[sentencing](#)

PRACTICE AREAS

Criminal law

Criminal procedure

Appellate procedure

QUESTIONS PRESENTED

1. Whether appellant preserved her complaint that the prosecutor made improper punishment-stage jury argument by characterizing the choice as prison punishment versus probation without punishment, after the trial court sustained her objection but appellant did not request an instruction to disregard or move for a mistrial.

HOLDINGS

1. A defendant waives a complaint about erroneous jury argument, including a claim that an instruction to disregard could not have cured the argument, by failing to pursue the objection to an adverse ruling through a request for an instruction to disregard or a motion for mistrial.

KEY QUOTATIONS

“The court of criminal appeals has made clear that before a defendant “will be permitted to complain on appeal about an erroneous jury argument or that an instruction to disregard could not have cured an erroneous jury argument, he will have to show he objected and pursued his objection to an adverse ruling.””
(at 2)

FACTUAL BACKGROUND

Chesney was driving on U.S. 75 after drinking when she looked down at her cell phone and crashed into a vehicle parked on the highway shoulder. She was traveling approximately 68 miles per hour, and subsequent testing showed a blood-alcohol concentration of .189. The crash killed Areli Joyner and seriously injured Mark Garren.

PROCEDURAL HISTORY

Chesney entered open guilty pleas in two cases. The jury assessed four years' imprisonment for intoxication manslaughter and five years' imprisonment for intoxication assault, recommending community supervision in the latter case; the trial court followed that recommendation and imposed eight years' community supervision. During punishment argument, the trial court sustained an objection to the prosecutor's characterization of prison and probation, but appellant did not request an instruction to disregard or move for a mistrial. The court of appeals held the complaint waived and affirmed both judgments.

DISPOSITION

affirmed

CASES CITED

- Cockrell v. State, 933 S.W.2d 73, 89 (Tex. Crim. App. 1996)

- Hernandez v. State, 538 S.W.3d 619, 622 (Tex. Crim. App. 2018)
- Estrada v. State, 313 S.W.3d 274, 303 (Tex. Crim. App. 2010)

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